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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>RODNEY WHITE,</b>	§	
	§	
	§	<b>Civil Action No.:</b>
Plaintiff,	§	
	§	
v.	§	
	§	
<b>FINANCIAL MANAGEMENT SYSTEMS,</b>	§	<b>JURY TRIAL DEMANDED</b>
<b>INC. d/b/a FMS SERVICES, INC.,</b>	§	
	§	
Defendant.	§	

**COMPLAINT**

RODNEY WHITE (“Plaintiff”), by and through her attorneys, KIMMEL & SILVERMAN, P.C., allege the following against FINANCIAL MANAGEMENT SYSTEMS, INC. d/b/a FMS SERVICES, INC. (“Defendant”):

**INTRODUCTION**

1. Plaintiff’s Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (“FDCPA”), and the Texas Debt Collections Practices Act, Tex. Fin. Code Ann. § 392.301 *et seq.* (“TFDCPA”).

**JURISDICTION AND VENUE**

2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and 28 U.S.C. § 1331, which grants this court original jurisdiction of all civil actions arising under the laws of the United States.



1           12.     Between November 2013 and December 2013, Defendant's collectors, including  
2 Don Kalnan, placed repeated harassing telephone calls to Plaintiff's home telephone number.

3           13.     Defendant's calls originated from numbers including 877-291-8405, which the  
4 undersigned has confirmed belongs to Defendant.

5           14.     During one call on December 16, 2014 at 9:42am, Defendant's collector Don  
6 Kalnan failed to confirm he was speaking with the correct individual, yet indicated to Plaintiff  
7 that Defendant had Plaintiff's account since October 2013, the last payment was in 1990, and  
8 that the debt was listed on Plaintiff's credit report affecting his credit score.

9           15.     Plaintiff was upset and shocked by these remarks as the debt was not listed on  
10 the most recent credit report he had viewed, and Defendant's collector completely failed to  
11 confirm he was the correct person before disclosing this highly personal information.

12           16.     Plaintiff told Mr. Kalnan that he never received anything in writing from the  
13 Defendant and that he wanted the calls from Defendant to stop.

14           17.     Despite Plaintiff's clear indication that Defendant's collection calls were  
15 unwanted, Mr. Kalnan continued attempting to collect the debt, indicating that he was calling to  
16 set up a payment arrangement and that Plaintiff should hold so he could get his supervisor on  
17 the phone.

18           18.     Plaintiff then terminated the call.

19           19.     Further, within five (5) days of its initial communication with Plaintiff,  
20 Defendant failed to send Plaintiff written notice setting forth her rights to dispute the debt  
21 and/or seek verification of the debt pursuant to the FDCPA.

22           20.     Defendant's actions as described herein were made with the intent to harass,  
23 upset, deceive, and coerce payment from Plaintiff.  
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**COUNT I**  
**DEFENDANT VIOLATED § 1692d OF THE FDCPA**

21. A debt collector violates § 1692d by engaging in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.

22. Defendant violated § 1692d when it placed repeated harassing calls to Plaintiff, when it persisted in speaking with Plaintiff despite his clear indication the calls were unwanted, when it continued to call with knowledge Plaintiff wanted calls to cease, and when it engaged in other harassing, oppressive, and abusive conduct.

**COUNT II**  
**DEFENDANT VIOLATED § 1692d(5) OF THE FDCPA**

23. A debt collector violates § 1692d(5) by causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

24. Defendant violated § 1692d(5) when it placed repeated harassing calls to Plaintiff.

**COUNT III**  
**DEFENDANT VIOLATED §§ 1692e AND 1692e(10) OF THE FDCPA**

25. A debt collector violates § 1692e by using any false, deceptive, or misleading representation or means in connection with the collection of any debt.

26. A debt collector violates § 1692e(10) by use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

1           27. Defendant violated §§ 1692e and 1692e(10) when its collector represented this  
2 debt was reported on Plaintiff's credit report although Plaintiff had recently checked it and the  
3 debt was not reported.  
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6                                   **COUNT IV**  
7                                   **DEFENDANT VIOLATED § 1692f OF THE FDCPA**

8           28. A debt collector violates § 1692f by using unfair or unconscionable means to  
9 collect or attempt to collect any debt.

10           29. Defendant violated § 1692f when it harassed Plaintiff regarding the alleged  
11 debt; when it made misrepresentations to Plaintiff concerning reporting of the debt to the credit  
12 bureaus; and, generally, when it used unfair and unconscionable means to collect the alleged  
13 debt.  
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16                                   **COUNT V**  
17                                   **DEFENDANT VIOLATED § 1692g(a) OF THE FDCPA**

18           30. A debt collector violates § 1692g(a) if within five days after the initial  
19 communication with a consumer, the debt collector fails to send the consumer a written notice  
20 containing (1) the amount of the debt; (2) the name of the creditor to whom the debt is owed;  
21 (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes  
22 the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt  
23 collector; (4) a statement that if the consumer notifies the debt collector in writing within the  
24 thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain  
25 verification of the debt or a copy of a judgment against the consumer and a copy of such  
26 verification or judgment will be mailed to the consumer by the debt collector; and (5) a  
27 statement that, upon the consumer's written request within the thirty-day period, the debt  
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1 collector will provide the consumer with the name and address of the original creditor, if  
2 different from the current creditor.

3 31. Defendant violated § 1692g(a) when it failed to send written notification, within  
4 five (5) days after its initial communication with Plaintiff, advising her of her rights to dispute  
5 the debt or request verification of the debt, as well as the name of the original creditor and the  
6 amount of the debt.  
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10 **COUNT VI**  
11 **DEFENDANT VIOLATED § 392.302(4) OF THE TFDCA**

12 39. A debt collector violates § 392.302(4) of the TFDCA by causing a telephone to  
13 ring repeatedly or continuously, or making repeated or continuous telephone calls, with the  
14 intent to harass a person at the called number.

15 40. Defendant violated § 392.302(4) of the Texas FDCPA by causing Plaintiff's  
16 home telephone to ring repeatedly or continuously with the intent of annoying and harassing  
17 the person at the called number, as it called Plaintiff on a daily basis.  
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20 WHEREFORE, Plaintiff, RODNEY WHITE, respectfully prays for a judgment as  
21 follows:

- 22 a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);  
23 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant  
24 to 15 U.S.C. § 1692k(a)(2)(A);  
25 c. All reasonable attorneys' fees, witness fees, court costs and other  
26 litigation costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3)  
27 and Tex. Fin. Code § 392.403(b); and  
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1           d.       Any other relief deemed appropriate by this Honorable Court.  
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4                                   RESPECTFULLY SUBMITTED,  
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6       Dated: September 17, 2014

                                  KIMMEL & SILVERMAN, P.C.

7                           By: /s/ Amy L. Bennecoff

8                           Amy L. Bennecoff

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